

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA**

MICCOSUKEE TRIBE OF INDIANS OF
FLORIDA,

Plaintiff,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and UNITED
STATES OF AMERICA,

Defendants,

and

THE STATE OF FLORIDA and
FLORIDA DEPARTMENT OF
ENVIRONMENTAL PROTECTION,

Defendant-Intervenor.

Case No. 1:22-cv-22459-KMM

JOINT MOTION TO SET DEADLINES

Plaintiff Miccosukee Tribe of Indians of Florida, Defendants United States Environmental Protection Agency (“EPA”) and the United States of America (together, the “Federal Defendants”), and Defendant-Intervenor State of Florida and Florida Department of Environmental Protection (“Intervenor”) jointly submit this motion to set deadlines to respond to the Complaint and for the resolution of any challenges to the Certified Administrative Record.

BACKGROUND

This record-review case involves Plaintiff’s challenge, under the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 *et seq.*, to EPA’s approval of Intervenor’s request to assume authority for regulating discharges of dredged or fill material into waters within the jurisdiction of the State in accordance with Clean Water Act (CWA) section 404(g-l). Plaintiff

seeks declaratory and injunctive relief, including vacatur of EPA's approval of Florida's proposal that the state assume responsibility for issuing permits for the discharge of dredged or fill material into certain waters within State and subsequent transfer of authority to the State of Florida to issue permits for the discharge of dredged or fill material into certain waters within the State.

On August 4, 2022, Plaintiff commenced this action. On November 21, 2022, Plaintiff completed service of the Summons and Complaint on the Federal Defendants. The parties have been discussing a resolution of this case. Those efforts are ongoing, and the parties agree that additional time dedicated to settlement discussions would be productive.

The parties further agree that Plaintiff's claims can and should be resolved through cross-motions for summary judgment based on the Certified Administrative Record.

DISCUSSION

This motion proposes a schedule with an initial deadline for the conclusion of settlement negotiations. If the settlement discussions are unsuccessful, the parties have agreed on deadlines for the Federal Defendants and Intervenor to answer the Complaint, for EPA to produce the Certified Administrative Record, and deadlines for the resolution of any challenges to the record. The parties have also agreed that briefing on summary judgment motions will begin 45 days after either (1) all parties confirm that there are no record issues or (2) any record issues are resolved by the Court. The parties will propose a briefing schedule to the Court when either point is reached. Given that the merits of the case are likely to be resolved after cross-motions for summary judgment, the parties also propose to vacate the trial date.

The parties propose to conclude their settlement discussions by March 1, 2023. If no settlement is reached, Federal Defendants and Intervenor intend to answer the Complaint, ECF

No. 1, and the Federal Defendants intend thereafter to produce the administrative record. The parties propose the following schedule for such filings and for the orderly resolution of any record-related issues:

Federal Defendants' answer	March 8, 2023
Intervenor's answer	March 15, 2023
Federal Defendants Produce the Certified Administrative Record	March 15, 2023
Plaintiff and/or Intervenor to notify Federal Defendants of any Administrative Record issues	March 22, 2023
Federal Defendants respond to Plaintiff and/or Intervenor regarding record issues	April 5, 2023
Federal Defendants to revise/supplement Certified Administrative Record (if applicable)	April 19, 2023
Plaintiff and/or Intervenor to file record-related motion(s)	May 3, 2023
Federal Defendants respond to record-related motion(s)	June 2, 2023
Plaintiff and/or Intervenor file reply to record-related motion(s)	June 9, 2023

The parties agree to meet and confer and, within seven days of the resolution of the administrative record issues raised by Plaintiff and/or Intervenor, if any, have agreed to file a motion to govern further proceedings, including a briefing schedule for cross-motions for summary judgment, if appropriate.

In addition to the above, the parties are aware that this action has been set for a final pre-trial conference on October 10, 2023, and a trial during the two-week period beginning October 23, 2023. ECF No. 22. As noted above, as a record-review case that may be adjudicated via dispositive motions, a trial is unlikely. Accordingly, the parties request the Court vacate the dates for the pre-trial conference and the trial. ECF No. 21.

CONCLUSION

For the foregoing reasons, the parties jointly request that the Court enter the deadlines as proposed herein.

Dated: January 18, 2023

Respectfully submitted,

/s/ George B. Abney

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